Recommendation for Preliminary Adoption of Proposed New Rule Section to Regulate the Placement of Fish Attractors on Waterways within DNR Properties; Administrative Cause No. 08-095P

For reconsideration is a proposed new rule section (312 IAC 8-2-4.5) that would specifically address the placement of materials in waterways, located on DNR properties, which are intended to serve as fish attractors. The proposal arose from discussions among the property holding divisions which indicated there is not a consistent approach to managing the placement of fish attractors.

The concepts for regulation are modeled, in part, after existing standards for the regulation of fish attractors in "public freshwater lakes". This proposal is being presented by the Division of State Parks and Reservoirs but was informally reviewed and is supported by the participants in the agency's internal DNR Property Use Committee.

The Natural Resources Commission previously gave preliminary adoption to a rule for this purpose during the November 2008 meeting. Subsequent to preliminary adoption, concerns were expressed that the language did not address the regulatory requirements of the Flood Control Act and the Navigable Waters Act. The absence of reference to an existing rule pertaining to fish attractors located in "public freshwater lakes" caused some confusion, even though the geographic scope of proposed 312 IAC 8-2-4.5 would not include a public freshwater lake, so a reference to the other rule is now included for clarity.

Recommended for preliminary adoption, as attached, is modified proposed 312 IAC 8-2-4.5.

Fish Attractors on DNR Properties
Administrative Cause No. 08-095P
October 23, 2009

TITLE 312 NATURAL RESOURCES COMMISSION
Proposed Rule

LSA Document #09-
DIGEST

Adds 312 IAC 8-2-4.5 to require a license from a property manager before the placement of a fish attractor on a DNR property. Establishes standards for license review. Effective on January 1, 2010.

312 IAC 8-2-4.5

Sec. 4.5. **(a) A person must obtain a license from a property manager, under this section, before constructing or placing a fish attractor within either of the follows:**
(1) A waterway located on a DNR property.
(2) A navigable waterway that is within the riparian area of a DNR property.
(b) To qualify for a license, a fish attractor must be each of the following:
(1) Anchored to ensure proper settling.
(2) Not placed:
    (A) in a channel;
    (B) in a beach area; or
    (C) near the waterway surface or in an area that would adversely affect public safety and navigation as determined by the division of law enforcement.
(3) Constructed of materials approved by the department and applying methods to ensure safe placement. In implementing this subdivision, the property manager shall consult with the division of water. If the division of water determines placement or maintenance of the fish attractor poses more than a minimum potential for harm, the department shall require the applicant to obtain a license:
    (A) Under IC 14-28-1 and 312 IAC 10 if located in a floodway.
    (B) Under IC 14-29-1 and 312 IAC 6 if located in a navigable waterway.
The department shall develop a memorandum of understanding concerning characteristics of a fish attractor likely to pose more than a minimal potential for harm relative to division of water review under this subdivision.
(4) Placed under the supervision of the division of fish and wildlife.
(c) The license holder must promptly remove from the waterway any portion of a fish attractor that becomes detached from the licensed structure. This responsibility is a condition of a license.
(d) This section does not apply to the placement of a fish attractor in a public freshwater lake. The placement of a fish attractor in a public freshwater lake is governed by 312 IAC 11-4-7.
(d) As used in this section, "fish attractor" means a structure or structures providing an artificial reef or similar habitat and which is or is intended to be beneficial to fish populations. *(Natural Resources Commission; 312 IAC 8-2-4.5)*